NATIONAL INSTITUTES OF HEALTH
Meeting of the Deputy Ethics Counselors and Ethics Coordinators

Minutes – October 12, 2004 – 1:00 pm – 31/CR 7

1.   Annual Ethics Training for DECs   Gretchen Weaver

DECs who attended the presentation of the NIH Ethics Training slides are considered to have received their annual ethics training for 2004.

2.   SES Equivalency Determination   Gretchen Weaver

The recent equivalency determination received from the Office of Government Ethics (OGE) applies only to the positions listed in the letter. All incumbents in the listed positions are now required to file the Public Financial Disclosure Report (SF 278). If an IC has any new positions, for example due to a reorganization, these new positions are **not** covered until OGE grants another equivalency determination.   It is not in the best interests of the NIH to request frequent equivalency determinations, but rather to do so periodically when sufficient new positions are identified.

This determination does not supersede the legal requirements for certain employees to file the SF 278, so all employees in the legally covered pay mechanisms (SES, O7 and above, ST, SL) still file the SF 278, regardless of whether their positions were listed on the recent letter. The recent letter dealt specifically with positions without regard to the status of the current incumbent, and thus identified the position as requiring the incumbent file. Incumbents in the covered pay mechanisms already file the SF 278 and will continue to do so.

Note: Employees cannot appeal the determination that they must file the Public Financial Disclosure Report (SF 278). There is no appeal process in the Ethics in Government Act. Employees required to file the Confidential Financial Disclosure Report (OGE 450) may appeal to their DEC for reconsideration of their filing status. Decision of the DEC is final.

> **ACTIONS:**
> • If a position title on the OGE list is incorrect, DECs/ECs will inform Ms. Weaver, who will handle getting the correction made on the OGE determination list.
> • Ms. Weaver will periodically request additional equivalency determinations as deemed necessary when additional positions are identified.

3.   Effects of Regulations on Banning Certain Outside Activities   Holli Beckerman Jaffe

> • **Transition Process:** When the regulation banning certain outside activities is finalized, there will be no 'grandfather' clause permitting employees to continue previously approved activities. Employees may be allowed a 'reasonable transition time' to wrap up the activity, but they will not be permitted to continue an activity which becomes a prohibited activity once the new regulation is in place.
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> When an activity is reviewed by the NIH Ethics Advisory Committee (NEAC), an email is sent to the employee to inform the employee of the decision. The email also notifies the employee of the potential for the activity to be terminated once the pending regulation is approved and in place.

- **Conversion to Official Duty Activity (ODA):** Several issues need to be considered prior to converting an outside activity to an official duty activity, whether as a result of the regulation prohibition or any other change from outside activity to ODA. Not all disapproved outside activities may be appropriately done as an official duty activity. It is a management decision whether it is related sufficiently to current official work to permit it to be carried out as an ODA. There may be some parts of the activity which could be justified as ODA, while other parts could be disapproved. In addition, if an employee has been engaged in an outside activity which becomes prohibited under the new regulation, and management determines that it (or part of it) can be done as ODA, the employee needs an authorization memo in place to resolve the appearance of a conflict of interest caused by having an official duty activity with an organization with which s/he had a personal activity within the past year (5 CFR 2635.502). In addition, it is important to analyze whether the correct employee is performing the specific activity as an ODA. Sometimes there are other employees with expertise better suited to the particular official duty activity. Analysis and decision on all these issues are necessary prior to converting any outside activity to an official duty activity.

    ACTION: Ms. Jaffe will send the standard language to the DECs and ECs, who can use it to remind employees, and to keep the NIH community informed.

4. **Lessons Learned From Ethics Training Presentation**   Jeanellen Kallevang

    Ms. Kallevang used the approved NIH Ethics Training slides to conduct the first session of annual ethics training for NICHD employees. Two slides were added: one describing the sponsored travel process within NICHD, and a cartoon. In addition, she emphasized to NICHD employees that the NICHD ethics office has an 'open door' policy, and they take a proactive approach to helping the employees. The NICHD DEC gave the introduction, using the first several slides, then Ms. Kallevang gave the remainder of the presentation using the rest of the slides. A panel consisting of the NICHD ethics staff (DEC and EC), the Director of the NIH Ethics Office, the two attorneys from the Office of the General Counsel Ethics Division, and the Chair of the DEC/EC meeting answered questions at the conclusion of the presentation.

    Their first session targeted all 278 and 450 filers, the top managers of the NICHD, and anyone who had submitted an outside activity request or official duty activity request. They were also encouraged to bring their staff to the session, which was held in Natcher Auditorium. Using the NIH Enterprise Directory (NED), all NICHD employees were identified, including non-FTEs. The list was exported to Excel for manipulation into a single alphabetical list to enhance registration at the training site.

    Employees did not need to pre-register. Instead, they signed in at the door and received a packet of information, including the NIH ethics brochure, supervisor responsibilities handout, the certificate, and an evaluation form. Certificates were pre-printed with the date and place of the training. Employees were also encouraged to send comments via email.

    Comments received so far by the NICHD DEC and EC were positive, plus some concrete suggestions for improving the ethics program. Suggestions for the training session included: 1) include a slide showing the objectives of the session; 2) ensure that all acronyms are explained; and 3) permit more time for questions and answers. Suggestions for improving the IC ethics program included adding examples and accurate answers on the web site.

5. **Annual Ethics Training**

    The NIH Ethics Office recently distributed information regarding several NIH-wide sessions available for all NIH staff. Sessions will be held at Natcher Auditorium, and videocast to several other rooms

around campus. Questions from the remote site will be answered by a qualified ethics trainer in each room. Mr. Croy is working with the IC ethics staff to schedule someone at each room receiving the videocast. With this approach, if all seats were filled, over 2000 employees could be trained each day. NIH-wide sessions will be held Natcher Auditorium, with videocast planned to the following locations (confirm with Mr. Croy prior to each day for additional or room changes).

October 19 at 1:00 pm and 3:00 pm (Natcher Auditorium): Videocast to:

31/6C10	40/Video Conference Room 1	6001 Exec Blvd, Room A1/A2
EPN Room H	RKL2, Room 9112/9114	

October 21 at 1:00 pm and 3:00 pm (Natcher Auditorium): Videocast to:

6001 Exec Blvd, Room B1/B2	EPN Room H
RKL2, Room 9208	40/Video Conf Room 1

November 9 at 8:30 am and 10:30 am (Natcher Auditorium): Videocast to:

6001 Exec Blvd, Room C	EPN Room G	RKL2, Room 9112/9114
40/Video Conf Room 1	1/Wilson Hall	

DECs and ECs may send their employees to any of these sessions. You also may identify certain room(s) for your employees so you can be there and answer questions. Videotapes will be available approximately one week following the session.

Note: The new Division of Extramural Activity Support (DEAS, also known as the Most Efficient Organization) set up as a result of the A-76 process, is officially part of the NIH OD. IC ethics staff are encouraged to invite those DEAS employees located in their area to attend their IC's training.

6.   **Ethics Working Groups**   Anne Stroh

The NIH Ethics Working Groups are continuing to meet and make recommendations for policies and procedures. A report from the Database Working Group was provided by Traci Melvin and Jeanellen Kallevang.

The Database Working Group reviewed the upgrades to the NIH Ethics Management Information System (EMIS) which are currently being implemented. The result will be EMIS verison 2.0. In addition, a Data Dictionary has been completed for distribution to the ICs to assist with data entry into the current EMIS (version 1.0). ICs with data to be imported into EMIS need to work with the OD Office of Information Technology to accomplish the import. Questions regarding who to contact may be addressed to Ms. Melvin.

The Center for Information Technology (CIT) staff (Sandy Desautels, Fred Carter) are analyzing the feasibility and cost of implementing a new NIH Enterprise Ethics System (NEES), which would be a significant upgrade of capabilities to replace EMIS. Currently, CIT staff are looking at business processes and analyzing need to determine cost and time frame. EMIS data would be imported into the NEES once it is completed and tested. The Project Definition Report will be shared with the NIH ethics community once it is finalized.

7.   **Audits/Inspections/Oversight:**

•   Office of Government Ethics (OGE) Audit: no followup meeting set yet.

•   General Accounting Office (GAO): They apparently are getting pressure from Congress but have not requested any additional information.

- Inspector General (IG): Ms. Jaffe is setting an appointment with the IG staff to obtain a status report.

- Congress: Congress is still asking questions about certain employees, sometimes employees they already have information on, and sometimes additional employees. There is no evidence of 'wrap up' yet. The NIH Office of Management Assessment (OMA) is continuing to follow up as needed, and has told employees if they are being reviewed by Congress.

8. Critical Elements

HHS added some specific language to be added to SES performance contracts, including a sentence in one section and two sub-elements, per the memo and attached information from the HHS Office of the General Counsel Ethics Division. The HHS language supersedes the NIH language recently added to performance contracts. ICs must now add the additional language to all SES contracts. The changes are for SES contracts only, not all SF278 filers.

Note: On Thursday, October 14th, NIH is holding a meeting of SES staff. If possible, forward the information to your SES staff prior to that time.

ACTIONS:
1. Ms. Melvin will obtain the files in a more readable electronic format and forward to the ICs.
2. ICs will update all SES performance contracts and submit a copy of the revised contract to the HHS DEAO, no later than November 30, 2004.

9. Announcements

- NIH Ethics Office staff:
  New and permanent staff: Diane Christensen, Jon Donnelly, Jo Duggan
  Contract staff: Fran Plyler, Linda Quick-Cameron, Lynn Nedds

- NIH Ethics Program Web site: new documents recently added: legal consulting, intramural service on scientific advisory boards.

- Chris Clements of NIDCD designed a check list for completing the OGE450; it will be added to the web.

- Conflict of Interest Article: The *New England Journal of Medicine (NEJM)* recently published an article on conflicts of interests. Staff are encouraged to read it.

Next Meeting: Tuesday, November 9, 2004, 1:30 pm, Building 31, Conference Room 6

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